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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Stephan RUPPERT et al. **Confirmation No.: 7654**
Serial No. : 10/830,000 Group Art Unit: 1617
Filed : April 23, 2004 Examiner: unknown
For : ACTIVE INGREDIENT-CONTAINING COSMETIC CLEANSING
EMULSIONS

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Amendment
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir:

Pursuant to 37 C.F.R. § 1.56 and 37 C.F.R. §§ 1.97-1.98 and supplemental to the Information Disclosure Statement filed October 12, 2004, Applicants hereby direct the Examiner's attention to an Examination Report which issued in connection with German Patent Application 101 53 023.4 of which the above-referenced application claims priority. The passage of the Examination Report which deals with patentability states the following (unverified translation):

In this Office Action, the following references are mentioned for the first time (the numbering thereof also applying to the further proceedings):

The examination of your application on the basis of patent claims 1 through 12, filed on October 26, 2001, has led to the following preliminary result.

- (1) EP 1 166 772 A1
- (2) EP 0 739 619 A1
- (3) FR 2 731 616 A1
- (4) EP 0 422 862 A2

From (1), see in particular claims 1 through 7, page 9, last example, page 8, paragraphs 60, 61 and 62, cosmetic and dermatological cleansing emulsions are known that contain 1% to 30% of one or more detergent surfactants with an HLB of more than 15, 35% to 50% of one or more oil components, 0.2% to 5% of one or more polyacrylates and 5% to 60% of water. In the cited examples, antioxidants (= active agents) are contained additionally, e.g., γ -hydroxyfatty acids or vitamins A, C and E, in the preferred ranges of 0.001% to 30%.

From (2), see in particular claims 9, 15, 26 through 28 and example 12, emulsions are known which contain 11g of nonionic surfactants with an HLB value greater 15 (Plantaren 2000 = decyl glucoside; Nikkol HCO-60 = PEG-60 hydrogenated castor oil), 50g of shea butter, 8g of glycerin (active agent) and 0.9g of Carbopol 980 (polyacrylate) in aqueous solution.

In independent claim 1, cosmetic and dermatological cleansing emulsions are claimed that contain 1% to 30% of one or more surfactants with an HLB value greater 15, 35% to 50% of one or more oil components, 0.001% to 30% of one or more active agents, 0.2% to 5% of one or more polyacrylates and 5% to 60% of water.

Since the components claimed in claim 1 filed by the applicant are used in (1) and (2) in the also claimed amounts, claim 1 is anticipated by references (1) and (2), each document independently. Therefore, the subject matter of claim 1 cannot be granted for lack of novelty.

The following further references are cited:

- (3), see in particular claims 3, 5, 6, 8, 9, 17 and 20 in connection with page 6, lines 20 and 21, and
- (4), see in particular claim 1, as well as examples I and II.

The subject matter of dependent claims 2 and 3 is an HLB value of more than 25 or more than 35. In (1), claims 3 and 4, cosmetic and dermatological cleansing emulsions with HLB values greater 25 or greater 35 are recited. Claims 2 and 3 filed by the applicant are thus also anticipated by reference (1). Therefore, the subject matters of claims 2 and 3 cannot be granted for lack of novelty.

The same applies to dependent claim 4. The polyacrylates claimed therein are stated in references (1), claim 5, (2), claim 15 and example 12, and (3), claim 5. Claim 4 is anticipated by (1), (2) and (3), each document independently. The subject matter of claim 4 cannot be granted for lack of novelty either.

The subject matter of dependent claim 5 is a list of anionic, ampholytic/betainic and nonionic surfactants. An identical list is found in (1), claim 6, and selected surfactants from this list are found in (3), claim 3. Claim 5 is thus anticipated by references (1) and (3), each document independently. Therefore, the subject matter of claim 5 cannot be granted for lack of novelty.

The same applies to the particular embodiment in claim 6. The subject matter of dependent claim 6 is anticipated by (1), page 10, last example and, therefore, cannot be granted for lack of novelty either.

The subject matter of dependent claim 7 is a list of employable active agents. These are also anticipated by references (1), (2) and (3), each document independently. Thus, groups of oxidants are cited in (1), paragraph 61, which include, among other things, also the alpha-hydroxy acids and vitamins C, A and E recited in claim 7 filed by the applicant.

In (2), example 12, glycerin is used as active agent and in (3), page 6, line 20, the vitamins are recited as well. The subject matter of claim 7 thus cannot be granted for lack of novelty.

The special embodiment in dependent claim 8 is anticipated by (1), claim 7, in connection with page 8, paragraph 62. The subject matter of claim 8 thus cannot be granted for lack of novelty.

The use according to claims 9, 10, 11 and 12 follows from references (1), see in particular page 5, paragraph 28, and page 8, paragraph 65, (2), claims 26, 27 and 28, and (3), claim 20. Claims 9, 10, 11 and 12 are anticipated by (1), (2) and (3). The subject matters of claims 9, 10, 11 and 12 cannot be granted for lack of novelty.

With the present documents, the grant of a patent cannot be held out, rather, a rejection of the application must be expected.

Applicants note that copies of documents (1) to (4) cited in the German Examination Report have already been submitted in the Information Disclosure Statement filed October 12, 2004 (see documents (1), (2), (7) and (8) cited therein).

A copy of the Examination Report for German Patent Application 101 53 023.4 is enclosed herewith. Accordingly, the Examiner is respectfully requested to consider the information submitted herein.

Applicants note that an Office Action on the merits has not yet issued in the instant application, and thus, no fee is necessary to ensure consideration of this statement. However, if an Office Action has issued and is crossing in the mail with this statement, the Patent and Trademark Office is hereby authorized to charge Deposit Account No. 19-0089 any fee necessary to ensure consideration of the submitted information.

If there should be any questions, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
Stephan RUPPERT et al.

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